STATE OF MICHIGAN BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

Hon. Kirk W. Tabbey Chief Judge 14A District Court 415 W. Michigan Ave. Ypsilanti, MI 48197

RFI 2014-21277

DECISION AND RECOMMENDATION FOR ORDER OF DISCIPLINE

At a session of the Michigan Judicial Tenure Commission, held on November 10, 2014, in Detroit, Michigan at which the following Commissioners were

PRESENT:

Hon. Nanci J. Grant, Chairperson
Hon. David H. Sawyer, Vice-Chairperson
Hon. Pablo Cortes, Secretary
Thomas J. Ryan, Esq.
Nancy J. Diehl, Esq.
Hon. Monte Burmeister
Hon. Michael M. Hathaway
David T. Fischer¹
Melissa B. Spickler

I. Introduction

The Hon. Kirk W. Tabbey ("Respondent") is a district court judge (and the chief judge) of the 14A District Court in Washtenaw County. Respondent is represented in these proceedings by Thomas W. Cranmer. For the reasons set forth more fully within, the Michigan Judicial Tenure Commission ("Commission") recommends that the Supreme Court ("Court") publicly censure Respondent and suspend him, without pay, for a period of 90 days.

¹ Commissioner Fischer is not related to the Commission's executive director, Paul Fischer.

II. PROCEDURAL BACKGROUND

The Commission received a Request for Investigation regarding the Respondent, and assigned it Grievance No. 2014-21277. The Commission reviewed the police report and results of the breath tests administered to the Respondent. The Commission's executive director also spoke with Mr. Cranmer, counsel for Respondent, who had called to report Respondent's arrest for drunk driving. Mr. Cranmer and the Commission's executive director ((acting as the functional equivalent of the Examiner²) then entered into a Settlement Agreement, a copy of which is appended to this Decision and Recommendation as Attachment A.

III. STANDARD OF PROOF

The standard of proof in a judicial discipline proceeding is a preponderance of the evidence. *In re Morrow*, 496 Mich 291, 298 (2014).

IV. FINDINGS OF FACT

The Commission accepts the facts stipulated to by the parties and adopts them, setting them out in full below:

- Respondent is, and at all material times was, a judge of the 14A
 District Court in Ypsilanti, Michigan.
- 2. As a judge, he is subject to all the duties and responsibilities imposed on judges by the Michigan Supreme Court, and he is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.

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Although no formal complaint was issued, the Judicial Tenure Commission's executive director assumes the role of "examiner" for purposes of this proceeding, as he and the Respondent are in adversarial positions, and call upon the Commission in its adjudicatory role. See MCR 9.201(B)(F).

- 3. On September 17, 2014 Respondent operated a motor vehicle by towing a boat and trailer out of the water at a public launch and parking on the shoulder of a public road in Antrim County, Michigan, while having an alcohol content of 0.17 grams or more per 210 liters of breath.
- 4. On October 1, 2014, a criminal complaint was issued against Respondent, charging him with Operating a Motor Vehicle with a High Blood Alcohol Content, contrary to MCL 257.625(1)(c).
- 5. On October 16, 2014, Respondent pled guilty to a reduced charge of Operating a Motor Vehicle Under the Influence of Alcohol, contrary to MCL 257.625(1)(a), in 86th District Court case no. 2014-9791-SD, before the Hon. Michael Haley.
- 6. On that same date, Judge Haley sentenced the Respondent to pay a fine, and the case was closed.

V. CONCLUSIONS OF LAW

The parties have stipulated, and this Commission agrees and separately finds as well that Respondent's conduct violates the Code of Judicial Conduct and the standards of discipline for judges. The Commission further finds that Respondent's conduct constitutes:

- (a) Failure to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, in violation of Canon 1 of the Michigan Code of Judicial Conduct ("MCJC");
- (b) Irresponsible or improper conduct which erodes public confidence in the judiciary, in violation of MJCJ, Canon 2A;

- (c) Conduct involving the appearance of impropriety, in violation of MJCJ, Canon 2A;
- (d) Failure to conduct oneself at all times in a manner which would enhance the public's confidence in the integrity of the judiciary, contrary to MJCJ, Canon 2B; and
- (e) Conduct which exposes the legal profession or the courts to obloquy, contempt, censure, or reproach in violation of MCR 9.104(A)(2).

The Commission commends Respondent for "self-reporting," but the public should expect no less from its public servants. The inescapable fact is that Respondent drove a motor vehicle on a public road while he was intoxicated. His blood alcohol was at least 0.17 grams or more per 210 liters of breath, which is more than twice the limit for "legally drunk" (0.08). See MCL 257.625.

VI.SANCTION ANALYSIS

The Commission has considered the criteria for assessing proposed sanctions set forth in *In re Brown*, 461 Mich 1291, 1292-1293; 625 NW2d 744 (2000). A discussion of each relevant factor follows.

(a) misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct.

There is no evidence, and there is no reason to believe, that this was anything other than a one-time incident.

(b) misconduct on the bench is usually more serious than the same misconduct off the bench

Respondent's off-the-bench conduct, which constitutes a misdemeanor that had the potential to seriously endanger the public, nonetheless is very serious.

(c) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety

The commission of a crime by a judge erodes public confidence in the judiciary, which is prejudicial to the administration of justice. See In re Nebel, infra; In re Steenland, infra.

(d) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does

As noted above, Respondent's misconduct *does* implicate the actual administration of justice.

(e) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated

Respondent's actions are likely to have been more spontaneous than premeditated.

Respondent has pled guilty to operation of a motor vehicle under the influence of alcohol, a misdemeanor designed to promote public safety. Our Supreme Court has stated that "[t]he commission of a crime by a judge erodes public confidence in the judiciary, which is prejudicial to the administration of justice." *In re Nebel*, 485 Mich 1049 (2010); *In re Steenland*, 482 Mich 1230 (2008). *Nebel* and *Steenland* both dealt with judges who had committed the crime of operating a motor vehicle while under the influence of alcohol. The Court there imposed sanctions of a public censure and a suspension, without pay, of 90 days. The inexorable

conclusion is that Respondent, like *Nebel*, *Steenland*, and others before him, should be publicly censured and suspended without pay for a period of 90 days.

VII. CONCLUSION

Respondent's conduct harmed the public's perception of the judiciary, and Respondent recognizes that his actions in this matter were improper. The Commission hopes that that public confidence in the integrity of the judiciary can be restored by the faithful workings of the judicial disciplinary system. Accordingly, the Judicial Tenure Commission recommends that the Supreme Court publicly censure Respondent and suspend him, without pay, for a period of 90 days.

STATE OF MICHIGAN
JUDICIAL TENURE COMMISSION

Hon. Nanci J. Grant, Chairperson

Hon. David H. Sawyer, Vice Chairperson

Hon. Pablo Cortes, Secretary

Hon. Michael M. Hathaway

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COMPLAINT AGAINST:

Hon. Kirk W. Tabbey Chief Judge 14A District Court 415 W. Michigan Ave. Ypsilanti, MI 48197

RFI 2014-21277

DECISION AND RECOMMENDATION FOR ORDER OF DISCIPLINE (concurring opinion)

At a session of the Michigan Judicial Tenure Commission, held on November 10, 2014, in Detroit, Michigan at which the following Commissioners were

PRESENT:

Hon. Nanci J. Grant, Chairperson Hon. David H. Sawyer, Vice-Chairperson Hon. Pablo Cortes, Secretary Thomas J. Ryan, Esq. Nancy J. Diehl, Esq. Hon. Monte Burmeister Hon. Michael M. Hathaway David T. Fischer¹ Melissa B. Spickler

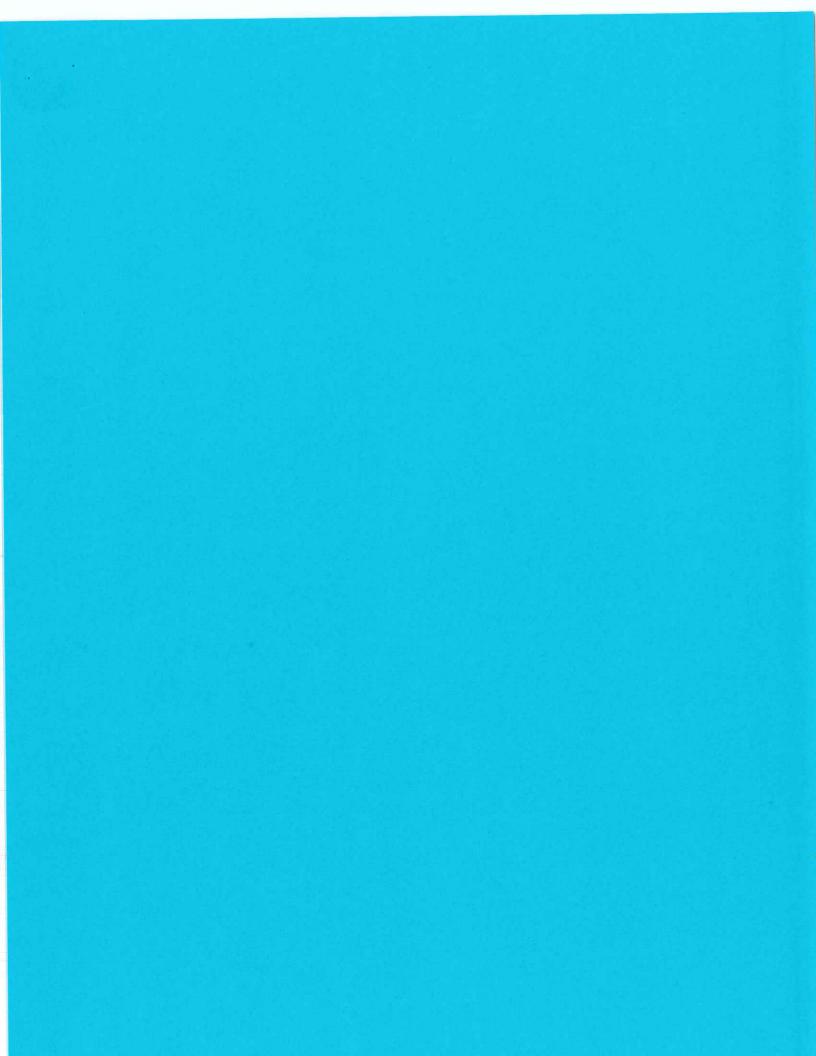
We concur in the result, only.

STATE OF MICHIGAN JUDICIAL TENURE COMMISSION

Hon Pablo Cortes, Secretary

Mon. Michael M. Hathaway

¹ Commissioner Fischer is not related to the Commission's executive director, Paul Fischer.



STATE OF MICHIGAN BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

Hon. Kirk W. Tabbey

Chief Judge 14A District Court 415 W. Michigan Ave. Ypsilanti, MI 48197 RFI 2014-21277

Paul J. Fischer (P35454) Examiner 3034 W. Grand Blvd., Suite 8-450 Detroit, MI 48202 (313) 875-5110 Thomas W. Cranmer (P25252) Attorney for Respondent 840 W. Long Lake Road, Suite 200 Troy, Michigan 48098 (248) 267-3381

SETTLEMENT AGREEMENT

Hon. Kirk W. Tabbey, ("Respondent"), through his attorney, Thomas W. Cranmer, and the Examiner, Paul J. Fischer, (collectively, "the parties") stipulate as follows.

A. BACKGROUND

- 1. Respondent is, and at all material times was, a judge of the 14A District Court in Ypsilanti, Michigan.
- 2. As a judge, he is subject to all the duties and responsibilities imposed on judges by the Michigan Supreme Court, and he is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.
- 3. Request for Investigation 2014-21277 is currently pending before the Michigan Judicial Tenure Commission regarding the Respondent ("the Grievance").

Although no formal complaint has been issued, the Judicial Tenure Commission's executive director assumes the role of "examiner" for purposes of this proceeding, as he and the Respondent are in adversarial positions, and call upon the Commission in its adjudicatory role. See MCR 9.201(B)(F).



- 4. Respondent admits the facts set forth in more detail below in Section B.
- 5. Respondent further admits that his conduct violates the Code of Judicial Conduct and the standards of discipline for judges.
- 6. The Commission may make findings of fact based on the stipulated facts in this Settlement Agreement, as well as draw reasonable inferences from them. The Commission may also make conclusions of law and a recommended sanction regarding the judicial misconduct, if any, which may have occurred.
- 7. The parties further stipulate that the Commission's recommended sanction, if any, shall be no greater than a public censure and a 90-day suspension, without pay.
- 8. If the Commission approves this Settlement Agreement, the Commission shall issue a Decision and Recommendation and may append a copy of this Settlement Agreement to that decision. The Commission shall file its Decision and Recommendation with the Supreme Court as a public document, pursuant to MCR 9.220.
- 9. If the Commission rejects the proposed settlement, this Settlement Agreement is null and void, and the rule of confidentiality provided in MCR 9.221 remains in force.
- 10. Respondent acknowledges that this Settlement Agreement covers only the Grievance listed here, and nothing in this Settlement Agreement precludes the Commission from investigating or pursuing other grievances that may be filed after this Settlement Agreement has been signed, which are unrelated to the matters, cases or issues contained in the Grievances.
- 11. Respondent acknowledges that he is entering this Settlement Agreement freely and voluntarily, that it is his own choice to do so, and that he is doing so in consultation with counsel.

B. FACTS

- Respondent is, and at all material times was, a judge of the 14A District Court in 12. Ypsilanti, Michigan.
- As a judge, he is subject to all the duties and responsibilities imposed on judges 13. by the Michigan Supreme Court, and he is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.
- On September 17, 2014 Respondent operated a motor vehicle by towing a boat 14. and trailer out of the water at a public launch and parking on the shoulder of a public road in Antrim County, Michigan, while having an alcohol content of 0.17 grams or more per 210 liters of breath.
- On October 1, 2014, a criminal complaint was issued against Respondent, 15. charging him with Operating a Motor Vehicle with a High Blood Alcohol Content, contrary to MCL 257.625(1)(c).
- On October 16, 2014, Respondent pled guilty to a reduced charge of Operating a 16. Motor Vehicle Under the Influence of Alcohol, contrary to MCL 257.625(1)(a), in 86th District Court case no. 2014-9791-SD, before the Hon. Michael Haley.
- On that same date, Judge Haley sentenced the Respondent to pay a fine, and the 17. case was closed.

J. Fischer (P35454)

Examiner

3034 W. Grand Blvd., Suite 8-450

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(313) 875-5110

DATED:

Thomas W. Cranmer (P25252) Ly 7. E. O.

Attorney for Respondent

840 W. Long Lake Road, Suite 200

Troy, Michigan 48098

(248) 267-3381

DATED:

10/28/14/

Hon. Kirk W. Tabbey
Judge, 14A District Court
Respondent

DATED:

10-28-14

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